

AMENDED IN ASSEMBLY MAY 14, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 374

Introduced by Assembly Members Berg, Levine, and Nunez

(Principal coauthor: Assembly Member Feuer)

**(Coauthors: Assembly Members Bass, Beall, Brownley, De Leon,
DeSaulnier, Dymally, Eng, Evans, Huffman, Jones, Karnette,
Laird, Leno, Ma, Saldana, and Wolk)**

**(Coauthors: Senators Calderon, Kuehl, Lowenthal, Oropeza, Romero,
Steinberg, and Wiggins)**

February 15, 2007

An act to add Chapter 3.95 (commencing with Section 7195) to Part 1 of Division 7 of the Health and Safety Code, relating to death.

LEGISLATIVE COUNSEL'S DIGEST

AB 374, as amended, Berg. California Compassionate Choices Act.

Existing law provides for the licensure and regulation of health facilities by the State Department of Health Services. Effective July 1, 2007, responsibility for the administration of the abovementioned provisions will be transferred to the State Department of Public Health.

Existing law authorizes an adult to give an individual health care instruction and to appoint an attorney to make health care decisions for that individual in the event of his or her incapacity pursuant to a power of attorney for health care.

This bill would enact the California Compassionate Choices Act, which would authorize an adult who meets certain qualifications, and who has been determined by his or her attending physician to be suffering from a terminal disease, as defined, to make a request for medication prescribed pursuant to this bill to provide comfort with an

assurance of peaceful dying if suffering becomes unbearable. The bill would establish procedures for making these requests.

This bill would further provide that no provision in a contract, will, or other agreement, or in a health care service plan contract, policy of disability insurance, or health benefit plan contract, shall be valid to the extent it would affect whether a person may make or rescind a request for the above-described medication. The bill would prohibit the sale, procurement, or issuance of any life, health, or accident insurance or annuity policy, or the rate charged for any policy, from being conditioned upon or affected by the request. The bill would require that nothing in its provisions be construed to authorize ending a patient's life by lethal injection, mercy killing, or active euthanasia, and would provide that action taken in accordance with the act shall not constitute suicide or homicide.

This bill would provide immunity from civil or criminal liability or professional disciplinary action for participating in good faith compliance with the act. The bill would provide that no health care provider is under any duty to participate in providing to a qualified patient medication to end that patient's life and would authorize a general acute care hospital to prohibit a licensed physician from carrying out a patient's request under this act on the premises of the hospital if the hospital has notified the licensed physician of its policy regarding this act.

This bill would require the State Department of Public Health to adopt regulations regarding the collection of information to determine the use of and compliance with the act, and would require the department to annually review a sample of certain records and make a statistical report of the information collected.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Chapter 3.95 (commencing with Section 7195)
- 2 is added to Part 1 of Division 7 of the Health and Safety Code, to
- 3 read:

1 CHAPTER 3.95. CALIFORNIA COMPASSIONATE CHOICES ACT

2
3 Article 1. General Provisions
4

5 7195. (a) The Legislature believes that dying patients should
6 have choices throughout the continuum of palliative care and that
7 much must be done to improve access to hospice care and pain
8 management. Hospice and effective palliative care successfully
9 assist many thousands of terminally ill patients to die with dignity
10 and without pain, and the Legislature hopes that all patients
11 considering the procedures available under this chapter will
12 properly consider other options, including hospice care and
13 effective pain management. The Legislature finds that medical
14 studies have shown that between 5 and 10 percent of dying patients
15 experience severe pain and suffering that cannot be palliated by
16 the best hospice or comfort care. The Legislature finds that in
17 response to the Death with Dignity Act in the State of Oregon, that
18 the referrals to hospice increased significantly. In addition, doctors
19 significantly increased the use of morphine and other strong pain
20 medications, thus improving the end-of-life care for more dying
21 patients.

22 (b) (1) It is the intent of the Legislature that the personal and
23 autonomous choice of dying patients regarding the time and manner
24 of their death provided under this chapter be viewed as but one of
25 several end-of-life options for dying patients.

26 (2) It is the intent of the Legislature that this chapter be strictly
27 construed and not expanded in any manner. The restrictions and
28 safeguards in the provisions of this chapter are based on the intent
29 of the Legislature to balance the personal and autonomous choice
30 of dying patients regarding the time and manner of their death and
31 the Legislature's goal of providing safeguards to ensure that there
32 are not instances of a coerced, unwanted, or early death by a
33 vulnerable dying patient.

34 (3) The Legislature finds and declares that historically persons
35 with disabilities have been subject to discrimination in the
36 provision of medical care and have been treated by some as though
37 their lives were less valuable or worthy of maintenance than those
38 without disabilities. The Legislature finds that this discriminatory
39 conduct is both illegal and reprehensible.

(4) It is the intent of the Legislature that a disability or age alone is not a reason for a patient to be a qualified patient as defined in subdivision (l) of Section 7195.1. Any disabled individual, *low-income person*, or elderly person, and any physician who is the attending physician to these individuals, must strictly comply with all of the provisions of this chapter. Strict and rigorous attention must be evidenced in distinguishing chronic conditions, that are not eligible conditions under this chapter, and terminal illnesses, which are eligible, as described in this chapter.

(5) It is the intent of the Legislature for the physician discussions and written patient documents in this chapter to be translated in a manner that is consistent with Section 7295.2 of the Government Code, Section 10133.8 of the Insurance Code, and Section 1367.04 if the otherwise qualified patient is non-English proficient and meets the criteria of those sections.

7195.1. For purposes of this chapter the following definitions shall apply:

(a) “Adult” means an individual who is 18 years of age or older.

(b) “Attending physician” means the physician who has primary responsibility for the care of the patient and for treatment of the patient’s terminal disease.

(c) “Capable” means that in the opinion of the patient’s attending physician or consulting physician, a patient has the ability to make and communicate health care decisions to health care providers, including communication through persons familiar with the patient’s manner of communicating, if those persons are available.

(d) “Consulting physician” means a physician, other than the attending physician, who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient’s disease.

(e) “Counseling” means a consultation between a state licensed psychiatrist or psychologist and a patient for the purpose of determining whether the patient is suffering from a psychiatric or psychological disorder, or depression causing impaired judgment.

(f) “Health care provider” means a person licensed, certified, or otherwise authorized or permitted by the law of this state to administer health care in the ordinary course of business or practice of a profession, and includes a licensed health care facility.

(g) (1) “Health care facility” means any health facility described in Section 1250.

(2) “Hospice” means a comprehensive, interdisciplinary program of medical and socially supportive care delivered to patients with a terminal disease in order to palliate their symptoms and pain since the patient’s condition is no longer amenable to curative therapies and for whom the primary therapeutic goal is comfort and dignity at the end of life.

(h) “Informed decision” means a decision, made by a qualified patient, to request and obtain a prescription to end his or her life in a humane and dignified manner, that is not based on coercion by the patient’s next-of-kin or any other third ~~parties~~, *party; that is not based on financial coercion by any other individual or entity*; is based on an appreciation of the relevant facts, and is made after being fully informed by the attending physician of all of the following:

(1) His or her medical diagnosis.

(2) His or her prognosis.

(3) The potential risk associated with taking the medication to be prescribed.

(4) The probable result of taking the medication to be prescribed.

(5) The feasible alternatives, as provided in paragraph (5) of subdivision (b) of Section 7196, including, but not limited to, comfort care, hospice care, and pain control.

(i) “Medically confirmed” means the medical opinion of the attending physician has been confirmed by a consulting physician who has examined the patient and the patient’s relevant medical records.

(j) “Medication” means medication prescribed pursuant to this chapter to provide comfort with an assurance of peaceful dying if suffering becomes unbearable.

(k) “Patient” means a person who is under the care of a physician.

(l) “Physician” means a doctor of medicine or osteopathy licensed to practice medicine by the Medical Board of California.

(m) “Qualified patient” means a capable adult who is a resident of California and has satisfied the requirements of this chapter in order to obtain a prescription for medication .

(n) “Resident” means a person who has lived in a principal place of residence in the State of California for six months or more.

(o) “Terminal disease” means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six months.

7195.3. An adult who is capable, is a resident of California, has been determined by the attending physician and a consulting physician to be suffering from a terminal disease, and who has voluntarily expressed his or her wish to obtain life-ending medication to his or her attending physician shall, in addition to the other requirements of this chapter, make both an oral and a written request for medication in accordance with this chapter in order to be eligible for qualification under this chapter.

7195.5. (a) A valid written request for medication under this chapter shall be in substantially the form prescribed by Section 7199, signed and dated by the patient and witnessed by at least two individuals who, in the presence of the patient, attest that to the best of their knowledge and belief the patient is capable, acting voluntarily, and is not being coerced to sign the request.

(b) Both of the witnesses shall be a person who is not any of the following:

(1) A relative of the patient by blood, marriage, or adoption.

(2) A person who at the time the request is signed would be entitled to any portion of the estate of the qualified patient upon death under any will or by operation of law.

(3) An owner, operator, or employee of a health care facility where the qualified patient is receiving medical treatment or is a resident.

(c) The patient’s attending physician at the time the request is signed shall not be a witness.

Article 2. Safeguards

7196. Upon being voluntarily informed by a qualified patient that the patient wishes to receive medication in accordance with this chapter, the attending physician shall do all of the following:

(a) Make the initial determination of whether a patient has a terminal disease, is capable, and has made the request voluntarily.

(b) Inform the patient of all of the following:

(1) His or her medical diagnosis.

(2) His or her prognosis.

1 (3) The potential risks associated with taking the medication to
2 be prescribed.

3 (4) The probable result of taking the medication to be prescribed.

4 (5) The feasible alternatives, including, but not limited to,
5 comfort care, hospice care, and pain control. This disclosure must
6 be provided in writing to the patient, and shall include, but not be
7 limited to, contact information about locally based providers of
8 comfort and hospice care.

9 (c) Refer the patient to a consulting physician for medical
10 confirmation of the diagnosis, and for a determination that the
11 patient is capable and acting voluntarily.

12 (d) Refer the patient for counseling, if appropriate pursuant to
13 Section 7196.2.

14 (e) Request that the patient notify next of kin.

15 (f) Inform the patient that he or she has an opportunity to rescind
16 the request at any time and in any manner, and offer the patient
17 an opportunity to rescind at the end of the 15-day waiting period
18 described in Section 7196.5.

19 (g) Verify, immediately prior to writing the prescription for
20 medication under this chapter, that the patient is making an
21 informed decision. *In cases where a patient is not expected to live*
22 *more than three months, prior to issuing a prescription for*
23 *medication provided under this chapter, the physician shall include*
24 *a notation on the prescription indicating the patient's current*
25 *prognosis.*

26 (h) Fulfill the medical record documentation requirements of
27 Section 7196.8.

28 (i) Ensure that all appropriate steps are carried out in accordance
29 with this chapter prior to writing a prescription for medication.

30 7196.1. Before a patient is qualified under this chapter, a
31 consulting physician shall examine the patient and his or her
32 relevant medical records and shall, in writing, confirm, the
33 attending physician's diagnosis and that the patient is suffering
34 from a terminal disease and verify that the patient is capable, is
35 acting voluntarily, and has made an informed decision.

36 7196.2. If, in the opinion of the attending physician or the
37 consulting physician, a patient may be suffering from a psychiatric
38 or psychological disorder that impairs judgment or from depression
39 or medication that impairs judgment, or the patient is not a hospice
40 patient, the attending physician or consulting physician shall

1 require the patient to undergo counseling as specified in subdivision
2 (e) of Section 7195.1. In this case, no medication shall be
3 prescribed unless the patient first undergoes the requisite
4 consultation or counseling and until the person performing the
5 counseling determines that the patient is not suffering from a
6 psychiatric or psychological disorder that impairs judgment, or
7 from impaired judgment caused by depression or medication.

8 7196.3. No person shall receive a prescription for medication
9 unless he or she has made an informed decision as defined in
10 subdivision (h) of Section 7195. Immediately prior to writing a
11 prescription for medication in accordance with this chapter, the
12 attending physician shall verify that the patient is making an
13 informed decision.

14 7196.4. The attending physician shall ask the patient to notify
15 the patient's next of kin of his or her request for medication
16 pursuant to this chapter. A patient who declines or is unable to
17 notify next of kin shall not have his or her request denied for that
18 reason.

19 7196.5. In order to receive a prescription for medication, a
20 qualified patient shall have made an oral request and a written
21 request, and reiterate the oral request to his or her attending
22 physician no less than 15 days after making the initial oral request.
23 At the time the qualified patient makes his or her second oral
24 request, the attending physician shall offer the patient an
25 opportunity to rescind the request.

26 7196.6. A patient may rescind his or her request at any time
27 and in any manner without regard to his or her mental state. No
28 prescription for medication under this chapter may be written
29 without the attending physician offering the qualified patient an
30 opportunity to rescind the request.

31 7196.7. No less than 15 days shall elapse between the patient's
32 initial oral request and the writing of a prescription under this
33 chapter. No less than 48 hours shall elapse between the patient's
34 written request and the writing of a prescription under this chapter.

35 7196.8. The following shall be documented or filed in the
36 patient's medical record:

37 (a) All oral requests by a patient for medication.

38 (b) All written requests by a patient for medication.

1 (c) The attending physician's diagnosis and prognosis, and his
2 or her determination that the patient is capable, acting voluntarily,
3 and has made an informed decision.

4 (d) The consulting physician's diagnosis and prognosis, and his
5 or her verification that the patient is capable, acting voluntarily,
6 and has made an informed decision.

7 (e) A report of the outcome and determinations made during
8 counseling, if performed.

9 (f) The attending physician's offer to the patient to rescind his
10 or her request at the time of the patient's second oral request
11 pursuant to Section 7196.5.

12 (g) The attending physician's discussion with the patient of
13 feasible alternatives, including, but not limited to, hospice care,
14 comfort care, and pain control.

15 (h) A note by the attending physician indicating that all the
16 requirements of this chapter have been met and indicating the steps
17 taken to carry out the request, including a notation of the
18 medication prescribed.

19 7196.9. Only requests made by California residents under this
20 chapter shall be granted.

21 *7197. Any medication prescribed under this chapter for the*
22 *purpose of aiding a terminally ill patient that was not*
23 *self-administered by that qualified patient shall be disposed of in*
24 *accordance with applicable laws and regulations governing the*
25 *disposal of unused medications after the patients death.*

26 7197.1. (a) The department shall adopt regulations regarding
27 requirements for the collection of information to determine the
28 use of and compliance with this chapter. The information collected
29 shall not be a public record and shall not be made available for
30 inspection by the public.

31 (b) The department shall generate and make available to the
32 public an annual statistical report of information collected,
33 disaggregated by age, gender, race, ethnicity, and language spoken
34 at home, pursuant to subdivision (a).

35 (c) The department shall annually review a sample of records
36 maintained pursuant to this chapter.

37 7197.3. (a) No provision in a contract, will, or other agreement,
38 whether written or oral, to the extent the provision would affect
39 whether a person may make or rescind a request for medication,
40 shall be valid.

1 (b) No obligation owing under any contract in existence on or
2 before January 1, 2008, shall be conditioned or affected by the
3 making or rescinding of a request by a person for medication.

4 (c) No health care service plan contract, as defined in
5 subdivision (r) of Section 1345, shall be conditioned upon or
6 affected by the making or rescinding of a request by a person for
7 medication. Any such contract provision shall be invalid.

8 (d) No provision of a policy of disability insurance or a health
9 benefit plan contract that provides coverage for hospital, medical,
10 or surgical expenses pursuant to Part 2 (commencing with Section
11 10110) of Division 2 of the Insurance Code shall be conditioned
12 upon or affected by the making or rescinding of a request by a
13 person to end his or her life in a humane and dignified manner.
14 Any such policy provision shall be invalid.

15 7197.5. The sale, procurement, or issuance of any life, health,
16 or accident insurance or annuity policy or the rate charged for any
17 policy shall not be conditioned upon or affected by the making or
18 rescinding of a request by a person for medication. A qualified
19 patient's act of ingesting medication to end his or her life in a
20 humane and dignified manner in accordance with this chapter shall
21 not have an effect upon a life, health, or accident insurance or
22 annuity policy.

23 7197.7. Nothing in this chapter shall be construed to authorize
24 a physician or any other person to end a patient's life by lethal
25 injection, mercy killing, or active euthanasia. The patient must
26 self-administer the medication provided under this chapter. Actions
27 taken in accordance with this chapter shall not, for any purpose,
28 constitute suicide, assisted suicide, mercy killing, or homicide,
29 under the law. Every state agency, department, or office that
30 prepares or issues a document or report that describes or refers to
31 the medical practice described in this chapter shall use the phrase
32 "aid in dying" to describe or reference the medical practice in the
33 document or report.

34 7197.8. Nothing in this chapter shall affect the authority of a
35 coroner or medical examiner to investigate a death.

36 Article 3. Immunities and Liabilities

37
38
39 7198. Except as provided in Section 7198.5:

1 (a) Notwithstanding any other provision of law, no person shall
2 be subject to civil or criminal liability or professional disciplinary
3 action for participating in good faith compliance with this chapter.
4 This includes being present when a qualified patient takes the
5 prescribed medication to end his or her life in a humane and
6 dignified manner.

7 (b) No professional organization or association, or health care
8 provider, may subject a person to censure, discipline, suspension,
9 loss of license, loss of privileges, loss of membership, or other
10 penalty for participating or refusing to participate in good faith
11 compliance with this chapter.

12 (c) No request by a patient for or provision by an attending
13 physician of medication in good faith compliance with this chapter
14 shall constitute neglect for any purpose of law or provide the sole
15 basis for the appointment of a guardian or conservator.

16 (d) No health care provider shall be under any duty, whether
17 by contract, by statute, or by any other legal requirement to
18 participate in the provision to a qualified patient of medication. If
19 a health care provider is unable or unwilling to carry out a patient's
20 request under this chapter, and the patient transfers his or her care
21 to a new health care provider, the prior health care provider shall
22 transfer, upon request, a copy of the patient's relevant medical
23 records to the new health care provider.

24 (e) Notwithstanding any other provision of law, a general acute
25 care hospital, as defined in subdivision (a) of Section 1250, may
26 prohibit a licensed physician from carrying out a patient's request
27 under this chapter on the premises of the hospital if the hospital
28 has notified the licensed physician of its policy regarding this
29 chapter.

30 7198.5. (a) Nothing in this chapter limits civil or criminal
31 liability resulting from other negligent conduct or intentional
32 misconduct by any person.

33 (b) The penalties in this chapter do not preclude criminal
34 penalties applicable under other law for conduct that is inconsistent
35 with this chapter.

36
37 Article 4. Severability

38
39 7198.9. Any section of this chapter that is held invalid as to
40 any person or circumstance shall not affect the application of any

1 other section of this chapter that can be given full effect without
2 the invalid section or portion thereof.

3
4 Article 5. Form of the Request

5
6 7199. A request for a medication as authorized by this chapter
7 shall be in substantially the following form:

8
9
10 REQUEST FOR MEDICATION

11 TO END MY LIFE IN A HUMANE AND DIGNIFIED MANNER

12 ——— I, _____, am an adult of sound mind.

13 ——— I am suffering from _____, which my attending physician has determined
14 is a terminal disease which will, within reasonable medical judgment, likely
15 lead to my death within six months, and which has been medically confirmed
16 by a consulting physician.

17 ——— I have been fully informed of my diagnosis, prognosis, the nature of
18 the medication to be prescribed, and the potential associated risks, the expected
19 result, and the feasible alternatives, including comfort care, hospice care, and
20 pain control.

21 ——— I request that my attending physician prescribe medication that will
22 allow me to hasten the end of my life in a humane and dignified manner.

23 -
24 ——— INITIAL ONE:

25 ——— I have informed my family of my decision and taken their opinions
26 into consideration.

27 ——— I have decided not to inform my family of my decision.

28 ——— I have no family to inform of my decision.

29 — I understand that I have the right to rescind this request at any time.

30 — I understand the full import of this request, and I expect to die when I take
31 the medication to be prescribed.

32 — I make this request voluntarily and without reservation, and I accept full
33 moral responsibility for my actions.

34 Signed: _____

35 Dated: _____
36 -

37 DECLARATION OF WITNESSES

38 We declare that the person signing this request:

39 —(a) Is personally known to us or has provided proof of identity;

40 —(b) Signed this request in our presence;

1 ~~—(c) Appears to be of sound mind and not under duress, fraud, or undue~~
2 ~~influence;~~

3 ~~—(d) Is not a patient for whom either of us is the attending physician.~~

4 _____ Witness 1/Date

5 _____ Witness 2/Date

6
7 NOTE: Neither witness shall be a relative (by blood, marriage, or adoption)
8 of the person signing this request. Neither witness shall be entitled to any
9 portion of the person's estate upon death. Neither witness shall own, operate,
10 or be employed at a health care facility where the person is a patient or resident.
11

12
13 *REQUEST FOR MEDICATION*

14 *TO END MY LIFE IN A HUMANE AND DIGNIFIED MANNER*

15 *I, _____, am an adult of sound mind.*

16 *I am suffering from _____, which my attending physician has determined*
17 *is a terminal disease which will, within reasonable medical judgment, likely*
18 *lead to my death within six months, and which has been medically confirmed*
19 *by a consulting physician.*

20 *I have been fully informed of my diagnosis, prognosis, the nature of*
21 *the medication to be prescribed, and the potential associated risks, the expected*
22 *result, and the feasible alternatives, including comfort care, hospice care,*
23 *and pain control.*

24 *I request that my attending physician prescribe medication that will*
25 *allow me to hasten the end of my life in a humane and dignified manner.*
26

27 *INITIAL ALL:*

28 _____ *I understand that I have the right to rescind this request at any*
29 *time.*

30 _____ *I understand the full import of this request, and I expect to die if*
31 *I take the medication to be prescribed.*

32 _____ *I make this request voluntarily and without reservation. I made*
33 *this request without any coercion or influence based on financial*
34 *or other reasons from anyone else or any entity.*

35 _____ *I accept full moral responsibility for my actions.*
36

37 *INITIAL ONE:*

38 _____ *I have informed my family of my decision and taken their opinions*
39 *into consideration.*

40 _____ *I have decided not to inform my family of my decision.*

1 _____ I have no family to inform of my decision.

2

3 Print Name _____

4 Signed: _____

5 Dated: _____

6

7 *DECLARATION OF WITNESSES*

8 We declare that the person signing this request:

9 (a) Is personally known to us or has provided proof of identity;

10 (b) Signed this request in our presence;

11 (c) Appears to be of sound mind and not under duress, fraud, or undue
12 influence;

13 (d) Is not a patient for whom either of us is the attending physician.

14 _____ Witness 1/Date

15 Print Name _____

16 _____ Witness 2/Date

17 Print Name _____

18

19 *NOTE: Neither witness shall be a relative (by blood, marriage, or adoption)*
20 *of the person signing this request. Neither witness shall be entitled to any*
21 *portion of the person's estate upon death. Neither witness shall own, operate,*
22 *or be employed at a health care facility where the person is a patient or*
23 *resident.*

24